

EMBARAGOED UNTIL 10 A.M. EST
Text as Prepared for Delivery
February 9, 2000

TREASURY DEPUTY SECRETARY STUART E. EIZENSTAT
HOUSE BANKING COMMITTEE

Mr. Chairman, Mr. LaFalce, I want to thank you, and the Members of this Committee, for holding this latest in a series of hearings. Your steady focus on Holocaust related issues has helped elevate them in the moral conscience of the world, and the work of individual Members of this Committee has given important support to our government's actions in this area.

I also want to thank you for inviting my long time friend and colleague, Count Lambsdorff, to join me on this panel. Count Lambsdorff is a dedicated friend of the United States, a man who has done much during his distinguished political career to strengthen the relationship between our two countries. In his current capacity as the Chancellor's Special Representative, he sits with me as Co-Chairman of the German Foundation Initiative negotiations to provide some measure of justice to public and private sector forced and slave laborers and others who suffered at the hands of German companies during the Nazi era. It is evidence of the German government's seriousness of purpose and sense of moral obligation that the Chancellor chose a man of the Count's public stature to represent his country in these talks. In addition, he has the full backing of German industry.

Slave and Forced Labor Negotiations

I turn now to the current negotiations on slave and forced labor. They are focused on the establishment and funding of a new German entity to be called the Foundation for Remembrance, Responsibility and the Future. It will be the mechanism through which those who worked as forced and slave laborers and those who suffered at the hands of German companies during the Nazi era can receive dignified payments.

Since your hearing last September, German industry and government agreed to raise their combined contribution to the foundation's capitalization to DM 10 billion, half from German industry and half from the German government. This was announced on December 17 in Berlin. This offer was a substantial increase over the initial German proposal of DM 6 billion in October and a subsequent offer of DM 8 billion in November.

All the parties to these negotiations -- The Governments of Belarus, the Czech Republic, Poland, Russia, Ukraine and the State of Israel, the Conference on Jewish Material Claims Against Germany, and the lawyers for the victims -- accepted the DM 10 billion offer as the capped amount for the German Foundation and the sum that will resolve the lawsuits in U.S. courts.

The process that led to this agreement has been long and complicated, and all the participants have had to show flexibility and good will. We could not have reached agreement on the DM 10 billion without the personal involvement and leadership of President Clinton and Chancellor Schroeder, as well as other senior officials in the U.S. and German governments. I also want to cite the constant support and personal involvement of Secretary Albright, Secretary Summers, White House Chief of Staff John Podesta, and National Security Advisor Sandy Berger.

I should also mention here the very significant contribution of German President Rau to this process. President Rau has been a consistent voice stressing the moral aspects of these issues. On December 17, in Berlin, and in the presence of Holocaust survivors, he said the following:

"I know that for many it is not really money that matters. What they want is for their suffering to be recognized as suffering, and for the injustices done to them to be named injustices. I pay tribute to all who were subjected to slave and forced labor under German rule and, in the name of the German people, beg forgiveness."

President Rau's apology provides assurance to many that the last word on the Holocaust will not be about money. Given the significance of President Rau's statement, I would appreciate being allowed to include it in the record of today's hearing.

I want to emphasize that despite the critical importance of what was agreed in Berlin on December 17, final settlement requires subsequent agreements on a number of issues, most importantly on an equitable allocation of the DM 10 billion among various groups and classes of claimants, and on the substance of the legislation that will define the administrative structure and operation of the German Foundation.

The Washington Plenary

Last week in Washington, over one hundred delegates, representing all the parties to the negotiation, assembled at the State Department for our eighth plenary session. Preparations for this meeting included numerous smaller meetings between various sides over the preceding six weeks since the Berlin agreement on the capped amount. The focus of our efforts in Washington were twofold: the issue of allocation, and bringing the draft German implementing legislation into alignment with agreements already reached in negotiations.

Allocation

At the outset, Count Lambsdorff and I agree that it is very important that the "victim side" be actively engaged in finding the compromises necessary to ensure that all elements of the Foundation are appropriately funded. To help focus those discussions, I proposed the following set of principles to guide discussions:

Slave and Forced labor shall have the highest priority in allocating Foundation funds. Payments shall include an inclusive category for personal injury and other cases, including but not limited to, medical experimentation, mothers of "Kinderheim" cases as well as all other personal injury cases directly involving German companies.

An allocation shall be made for aryanized property claims against German companies and for heirless/humanitarian/insurance claims.

An allocation shall be made for the Future Fund for projects of tolerance, taking into account the heirs of forced labor.

Administrative expenses shall be paid from interest on deposited funds.

Decisions on allocations should be made recognizing that the Foundation provides a potential remedy for any possible claim against German companies arising out of the Nazi era.

The United States strongly supports the efforts of the victims' groups to reach agreement on a fair and equitable allocation that can be set into the German law.

Following these principles should ensure an equitable balance between competing requirements for the limited funds available.

I am pleased to report that at the Washington plenary, very significant progress was made on allocation, sufficient for me to say that I believe that we may well be able to conclude this key aspect of the settlement soon.

Draft Legislation

The German Foundation will be established under German law. We welcome this for two reasons: first, because it is the vehicle through which the German government will appropriate their half share of the DM 10 billion, and second, because it will subject the Foundation to well established oversight and accountability requirements that charitable organizations in Germany must meet.

But, I will tell this Committee frankly that embodying the results of our nine-month negotiation in the draft legislation, based on a German Government's draft and the German legislative process, is a sensitive and difficult undertaking. I am pleased to say that the German government met intensively with us over the past six weeks, and engaged all parties to the negotiations at the Washington plenary.

To add weight to the German government's commitment to deal fairly with the parties to the negotiation, the German delegation to the Washington plenary included, as in the past, representatives from the five major Bundestag parties, all of whom took an active and extremely helpful part in discussions and will take the lead in the legislative process in Germany. In addition, I am pleased to accept the Bundestag Domestic Affairs Committee invitation to testify next week in Berlin. I believe that the German government fully recognizes the importance of submitting draft legislation to the Bundestag that reflects the commitments and understandings reached during our negotiations.

One of the most difficult tasks we face is to define the scope of the Nazi-era wrongs perpetrated by German industry that the Foundation will cover in its claims process. We are working to ensure that the Foundation's coverage is so broad that the United States will be able to file a Statement of Interest in U.S. courts in all cases brought against German companies arising out of the Nazi era. This Statement of Interest is a central element in the achieving the "legal peace" that the German companies seek. At our plenary meeting last week in Washington, we had a very productive discussion, and I am gratified that the German government has reaffirmed its intention to revisit the issue of the Foundation's scope in light of those discussions.

Offsets and "anti-accumulation" clauses

Also contained in early drafts of the legislation was a provision that would "take account of" previous or ongoing payments by the German government to a Holocaust victim but reducing the payments from the German Foundation. I urgently sought German agreement to drop this provision. It would have unfairly reduced the payment of thousands of Holocaust survivors -- many of whom are U.S. citizens -- who were forced to work in unspeakable conditions under the Nazis. Previous German programs, such as the German Federal Compensation Law (BEG), make payments to those whose liberty was taken from them.

There was also an "anti-accumulation" clause that would limit the amount any one individual could receive from the German Foundation. Since, the Foundation will

have accounts to pay for injury and aryanized property loss from banks and insurance companies, as well as for other injuries received at the hands of German industry, such as medical experimentation, this provision was patently unfair, essentially mixing "apples and oranges".

At the Washington meeting, the German negotiators committed to alter these two provisions in accordance with the concerns expressed by delegations.

Some Final Thoughts on the Foundation

There has been a good deal lot of expectation and confusion over who will benefit from the successful conclusion of these negotiations. Let me emphasize a few points:

- The Foundation that will be established by these negotiations will not cover all those who were wronged during the Nazi era. It will, however, cover, for example, those who worked for companies not the subject of lawsuits in the United States and companies that have long been out of existence. It will thus likely provide some measure of justice to more than a million victims of the Nazi era, for hundreds of thousands of whom the Foundation is the only possible of relief.
- American citizens who qualify will receive the same benefits as anybody else, and their applications will be process by an organization or organizations in the U.S. Travel to Germany or elsewhere will not be required.
- American taxpayers will be able to exclude their benefits from income under a tax provision in President Clinton's 2001 Budget that provides a clear statutory exemption for Holocaust-related reparations.
- No racial, ethnic or religious group will get favorable treatment. A slave or forced laborer is a victim of the Holocaust, whether he or she is a Czech, Pole, Jew, Romani or another nationality or religion.
- Despite the large price tag, and the hundreds of thousands of people who will eventually benefit, a settlement when reached will still only cover a limited

number of Holocaust victims and a limited number of crimes. Other survivors will not benefit because the crimes committed against them did not involve slave or forced labor or "aryanization" of property, or stolen insurance policies. In short, they were not crimes committed by German industry during the Nazi era.

- I am hopeful, however, that those victims who will not directly benefit, indeed all men of good will, will take real pleasure in the knowledge that at least this group of deserving Holocaust survivors will get recognition for their suffering and at least some small measure of justice.

Other Holocaust Related Issues

As I have said, the Holocaust is a compilation of crimes, and we have approached the issue on many fronts. I would now like to review the many other areas in which we are engaged, including art recovery - a subject in which you have taken an especially active role, recovering insurance policies, the Swiss bank settlement, and other issues.

Art Restitution

On art restitution, work is going ahead in many countries in line with the principles adopted at the art section of the Washington Conference a year ago December, at which you, Mr. Chairman, presided. Tomorrow you will hear from representatives of the American museum community as well as others with respect to how and to what degree these principles have succeeded in guiding the art world and fostering communication and cooperation among the various players. Major museums, such as the National Gallery and the Metropolitan Museum of Art in New York City, have been researching their collections. I would note that just last week, the North Carolina Museum of Art announced that one of its paintings, Madonna and Child in a Landscape, by the German master Lucas Cranach the Elder, had been stolen by the Nazis and is actually owned by the heirs of a Viennese physician. In keeping with the Washington principles, the Museum researched the question of provenance, working in cooperation with the Holocaust Claims Processing Office of the State of New York and the Commission for Art Recovery of the World Jewish Congress.

Let me take a moment, however, to highlight how the U.S. Government has been working to move this process forward. In my testimony last fall, I noted we had participated in an April 1999 hearing of the Cultural Committee of the Council of Europe in Paris on "Looted Jewish Cultural Property." As a result of that hearing, the Committee prepared model legislation on the return of Jewish cultural property. The Parliamentary Assembly of the Council adopted this resolution last November. This model legislation should initiate new legislation on this subject in European national parliaments, similar in scope to the groundbreaking restitution laws adopted by Austria.

The Lithuanian Government announced at the end of January that, under the auspices of the Council of Europe, it was inviting representatives of the world community to a forum on cultural properties of Holocaust victims to be held in Vilnius in October.

Germany's Cultural Minister recently announced that Germany will inaugurate a web site to help restore Nazi-confiscated art to its rightful owners. All major German museums were called upon to inspect the provenances of the artwork in their possession. Any artwork -- including coin collections and artifacts -- that are found to have unclear provenances will be publicized, with pictures, on the web site. This initiative follows the lead of the web site the French government has posted for many years to display art returned to France after the War but never claimed.

Holocaust Issues and Switzerland

Regarding Switzerland the Vice President and I visited Switzerland a year ago in January 1999 and met with then Swiss President Ruth Dreifuss. President Dreifuss reiterated her government's support for completion of work by various commissions on Holocaust-related issues. She also noted that the government remains committed to creating a "Solidarity Foundation" out of Switzerland's gold reserves that would, inter alia, support Holocaust survivors.

In recent months, it has become apparent that the Swiss Government faces some domestic opposition to its proposal for a Solidarity Foundation. The timing for introduction of Foundation legislation remains uncertain; a

referendum would be likely if a bill passes. Many hope that the Government can move forward to present Solidarity Foundation to people for approval this year.

In early December, the Volcker Committee released its final report that was critical of Swiss bank behavior for hindering access by heirs to dormant accounts of Nazi victims after the War. The Committee also revealed that there were more accounts of Holocaust victims than indicated by earlier surveys. The Committee recommended that the Swiss Federal Banking Commission authorize publication of the names of 25,000 account owners that have a strong probability of being related to victims of Nazi persecution. The Swiss are expected to make a decision on this matter in March. The Committee also recommended that 59 Swiss banks consolidate their databases, which are now separate and contain 4.1 million names, to facilitate the process of matching the names of account owners to those who died in the Holocaust. We hope that these recommendations can be acted upon favorably.

The Bergier Historical Committee released in December a report that is highly critical of Swiss government actions during World War II, noting that many refugees were returned to Nazi-occupied countries and sometimes the Swiss authorities confiscated the assets of refugees.

The Swiss Government very courageously welcomed the release of both reports and their forthright conclusions. The Government also apologized for the suffering, deportation, and death caused by Switzerland's World War II policies. (I note parenthetically that other countries, including the United States, barred entry to refugees from the Holocaust) We commend Switzerland's response to the Volcker Committee's and the Bergier Committee's conclusions. It demonstrates openness and a willingness to look honestly at its past.

Despite the August 1998 settlement of the class action litigation settlement entered into between Holocaust victims and Swiss banks, the court has not yet approved a distribution plan, and thus the 1.25 billion dollars to Holocaust victims have not yet been distributed. The procedures inherent in our class actions often require 18 months before distributions can be made to claimants. Judge Korman plans to have a fairness hearing on the settlement on March 15. In recent weeks, the court has

asked the Swiss authorities to provide the information. I understand the Court needs the refugee database and a list of German companies whose assets were frozen in Switzerland during the War. The process for early court approval of the settlement depends on the court having available all the information necessary to final judicial approval, including information from the Swiss authorities. With this information, the Court may be able to approve the distribution plan in March and conclude matters by June.

Communal Property

On communal property, we continue to work with the Central European governments on restituting to rightful owners property belonging to Europe's religious communities that both the Nazi regime and subsequent communist governments had confiscated.

When I commenced working on Holocaust issues in 1995, much of my early activity was focused on restituting property to rightful owners. Both the Nazi regime and the communist governments of central and eastern Europe had confiscated significant amounts of property belonging to Europe's religious communities. The new democratic governments had just begun to deal with the issue.

Restituting property is a complex matter. Some of the properties are located in what are now highly developed urban areas and are being used not merely for commercial purposes but also for such social purposes as medical treatment and education. Changing ownership and use after a more than a half century is difficult at best.

At the same time, governments must realize that honoring property rights is a pre-requisite to participating in the international marketplace and in attracting investment. So while initially expensive and politically sensitive, sound property restitution systems are clearly in the interest of all the central and Eastern European countries.

In my discussions with government officials, I have emphasized a number of principles that seem to me to be important to keep in mind in addressing property restitution issues. These principles include:

- Equitable, transparent and non-discriminatory procedures to evaluate specific claims.
- Access to archival records and use of alternative forms of evidence if primary documents no longer exist.
- Implementation of restitution policies at regional and municipal levels.
- Non-discriminatory procedures, without citizenship or residence requirements.
- Clear and simple legal procedures.
- Implementation of court decisions on the basis of equality and non-discrimination.
- Priority of restitution claims before privatization occurs.
- Provisions for the present occupants of restituted property.
- Transfer of clear title including the right of resale, not simply the right to use property, which could be revoked at a later time.
- Restitution or compensation for communal property irrespective of whether the property had a religious or secular use.
- Establishment of foundations, managed jointly by local communities and international groups, to aid in the preparation of claims and to administer restituted property.
- Protection of cemeteries and other religious sites.

As I did in my testimony before this committee last September, I am appending to my written statement a country by country summary of property issues. I want to discuss in some detail, however, the issues of both private and communal property in Poland.

In September, the Polish government submitted to Parliament legislation dealing with private property which was non-discriminatory in terms of allowing former Polish citizens and their heirs who now live outside of Poland to claim their property. This is in line with the commitment made to me by the Polish government. However, this was amended in committee to add restrictive residency requirements for claimants which we believe are discriminatory and are the kind of limitation we are trying to avoid. We are emphasizing the importance of the final act reflecting the Polish government's position. We have raised this issue with visiting Polish officials here in Washington and our Embassy has raised it in Warsaw. In addition, I believe that Chairman Smith of the CSCE Commission sent a letter to the President of the Polish parliament. Polish officials have informed us that they strongly favor the draft submitted by the government and are opposed to the amendments.

The return of Jewish communal property in Poland has been slow because of the difficulty the WJRO and the Polish Jewish community have had in establishing a foundation to prepare claims and administer some of the returned property. Negotiations between the two groups broke down last year. To get the two parties back to the negotiating table, I asked Ambassador Henry Clarke to serve as a mediator to get them going again. The third of his mediation sessions is now underway in Warsaw. In addition, I met last week with the WJRO co-chairmen and urged them to give their negotiators the necessary flexibility to finish this important work. I am optimistic that the foundation will be up and running soon so that the restitution process can be accelerated.

Archives

Archival openness is essential, not only to assist in claims and advancing scholarship, but so that every country can honestly confront its behavior during these difficult years and draw the lessons needed to advance tolerance and social justice. It is important that the Russians open up their archives on Raul Wallenberg, that the Vatican allow research into its archives, and museums allow scholarly and provenance research into their collections. At a conference in Stockholm last month, attended by delegates from 46 nations, a declaration was agreed to calling for opening up archives containing information on the Nazi-World War II

era. In addition, following my request to Count Lambsdorff, he has informed me that many of the companies involved in the German slave/forced labor initiative have agreed to open their archives to legitimate historical research from this era. Some have done so already. We are encouraging the broadest participation of German companies in this effort at openness.

Education and Remembrance

I had the distinct honor of leading the U.S. delegation to The Stockholm International Forum on the Holocaust, held January 26-28. The Stockholm Forum, appropriately the first major conference of the new millennium, was an outstanding success and built upon the previous Holocaust conferences held in London and Washington. Twenty heads of state and government and delegations from 46 countries attended. Only his prior commitment to deliver the State of Union address prevented the President from attending.

Delegates committed their countries to promoting holocaust education and remembrance, encouraging the study of the Holocaust in schools and universities, and in taking all necessary steps to open relevant archives. As embodied in the "Stockholm Declaration", these commitments, made by national political leaders, are unprecedented, and in the words of holocaust survivors with whom I spoke, "monumental" and "historic". Argentina, Bulgaria, Latvia, and Lithuania requested the International Holocaust Education Task Force to begin liaison projects on teaching the Holocaust with them, and, along with Ukraine, expressed interest in Task Force membership.

The concept of the Stockholm Forum was the personal initiative of Swedish Prime Minister Persson. In addition to the leadership and inspiration he gave to the Forum, he also demonstrated exceptional political leadership in exploring the historical truth of Sweden's wartime neutrality and in remembering the horrible crimes of the Holocaust era.

The work of the International Holocaust Education Task Force continues. It is translating the experience and expertise gained in teaching the Holocaust in countries that are members of the Task Force to other countries, to help them develop Holocaust education and remembrance in

their societies. There has been a successful project in Czechoslovakia aimed at training in the teaching of the Holocaust, and similar projects have been requested by other countries.

To help support such activities, the Task Force last month established an endowment fund, to be administered by the Swedish Ministry of Foreign Affairs. Our government strongly supports this fund, and hopes to be able to announce a contribution in the near future.

In the same Stockholm Declaration of which I spoke, the participating nations committed their countries to promoting Holocaust education and remembrance, and encouraging the study of the Holocaust in their schools and universities.

Persecutee Fund

The December 1997 London Conference on Nazi Gold established the Nazi Persecutee Relief Fund to provide assistance to needy survivors of Nazi persecution. Seventeen countries have pledged \$61 million. Congress appropriated \$25 million over a three year period. We allocated the first year's tranche of \$4 million to the Conference on Jewish Material Claims Against Germany to provide support to survivors living in eastern and central Europe. We are now in the process of allocating the second tranche of \$10 million. I am suggesting that half go to the German Foundation, \$4.5 million to the Claims Conference and \$500,000 to several Holocaust education and research projects.

Insurance

You will hear from former Secretary of State Lawrence S. Eagleburger on the progress of the International Commission on Holocaust Era Insurance Claims (ICHEIC). The U.S. Government has strongly supported this international effort to bring justice to victims of Nazi persecution and are pleased that the International Commission is expected to announce the launch of its full-scale claims and outreach program this month.

The ICHEIC claims process will use relaxed standards of proof in dealing with outstanding claims from the Holocaust era and will ensure the opening of companies' files, the cross-checking of names with Yad Vashem's

records of Holocaust victims, and further research into European archives to find names of potential claimants. The International Commission has tested its claims procedures in a "fast-track" process for existing claims previously submitted to regulators cooperating with the Commission. Substantial progress has been made through this "fast-track" process and has resulted in the payment of a number of existing claims to Holocaust survivors and their heirs.

Recent focus has been on the cooperation of the ICHEIC with the German Foundation Initiative. Details of this important linkage are still being negotiated, but we expect that the German Foundation will recognize the International Commission as the exclusive mechanism for resolving insurance claims. As a result, all claims against German insurance companies brought to the Foundation will be processed under the International Commission's rules and procedures. In addition, the German Foundation will have a humanitarian insurance fund that shall be passed through to the International Commission, which shall have responsibility for administering such a fund.

In the most recent discussions of the International Commission's relationship with the German Foundation, representatives of both European insurance companies and Jewish organizations tabled proposals to pay outstanding Holocaust-era German insurance claims, to create a humanitarian fund for nationalized policies, heirless policies and policies against German companies no longer in existence, as well as for social purposes as determined by the ICHEIC. Further discussions to consider these proposals, as well as how to deal with the overall European insurance market, will take place this month.

The U.S. Government has supported the International Commission on Holocaust Era Insurance Claims since it began, and we believe it should be considered the exclusive remedy for resolving insurance claims from the World War II era. As stated in the MOU signed by the five ICHEIC member companies, those companies cooperating with the Commission deserve "safe haven" from sanctions, subpoenas, and hearings relative to the Holocaust period. I recently wrote to the state insurance commissioners in Washington and California, emphasizing my strong support for the international efforts to create a claims settlement process under the International Commission and stressing that, in

their legitimate concern for Holocaust survivors, proposed actions in these states could undermine the work of the ICHEIC. Copies of these letters are available through the State Department's Office of Holocaust Issues.

We strongly encourage all insurers that issued policies during the Holocaust era -- including those in Germany, Austria, and the Netherlands, including Aegon -- to join the International Commission and participate in fully in its claims, outreach, and humanitarian programs. The ICHEIC is the best and most expeditious vehicle for resolving insurance claims from this period, and membership in the International Commission provides the only real way of both ensuring that valid claims are paid and resolving international moral and humanitarian responsibilities, i.e., for heirless and nationalized claims or companies no longer in existence.

Payments made by ICHEIC member companies to individual claimants, as well as their contributions to the humanitarian fund, need to be negotiated within the International Commission. These payments, if credited to the insurance companies, would avoid double payments by those who participate in the International Commission.